



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Fenical et al. Art Unit: 1651
Application No.: 09/991,518 Examiner: Irene Marx
Filing Date: November 16, 2001 Confirmation No.: 7755
Title: MARINE ACTINOMYCETE TAXON FOR DRUG AND
FERMENTATION PRODUCT DISCOVERY

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

DECLARATION OF
APPLICANT UNDER 37 C.F.R. § 1.132

Sir:

I, Dr. Paul R. Jensen, do hereby declare and state that:

1. I am a co-inventor of the subject matter described and claimed in the U.S. Patent Application Serial No. 09/991,518, filed on November 16, 2001 entitled, "Marine actinomycete taxon for drug fermentation product discovery".

2. I am familiar with the prosecution history of Patent Application Serial No. 09/991,518.

3. I understand that the Examiner rejected the claims because the claimed subject matter includes specific strains of *Salinospora* and are considered biological material which must be made publicly available.

4. I declare that SEQ ID NO:3 and SEQ ID NO:4, corresponding to Genbank Accession Nos. AY040619 and AY040620, respectively, are identical.

5. I declare that SEQ ID NO:4 was derived from strain CNH646, which was deposited September 27, 2000 as ATCC No. PTA-2501, and that SEQ ID NO:5 was derived

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from strain CNH898, which is identical to strain CNB476, deposited June 30, 2003 as ATCC No. PTA-5275.

6. I declare that the deposits were made under the provisions of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure and the Regulations thereunder (Budapest Treaty). This assures maintenance of viable cultures at ATCC for at least 30 years from the date of deposit, or for the enforceable life of the patent, or for a period of 5 years after the date of the most recent request for furnishing a sample of the deposited material, whichever is longest. The organisms will be made available by ATCC under the terms of the Budapest Treaty and the line will be irrevocably and without restriction or condition released to the public upon issuance of a patent. Also, If the culture deposit should die or be lost or destroyed when cultivated under suitable conditions, it will be promptly replaced on notification with a viable specimen of the same culture. Availability of a deposited strain is not to be construed as a license to practice the invention in contravention of the rights granted under the authority of any government in accordance with its patent laws.

7. I further declare that all statements made herein of knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

1/24/06
Date

Paul R. Jensen, Ph.D.
Paul R. Jensen, Ph.D.